

## REMARKS

Reconsideration of the application is respectfully requested in view of the amendment of June 16, 2003, entry of which is being requested in the accompanying RCE, and further in view of the following remarks.

With respect to the definitions, it is submitted that they are not inconsistent. The starting point of claim 1 is a probiotic, which is viable (page 5, last paragraph of the specification). That probiotic is rendered non-viable as recited in claim 1. The result is Health active non-viable bacteria as set forth at the top of page 6 of the specification.

Lee uses non-viable organisms which had previously been grown until the maximum production of acid forming enzymes is reached, after which the bacterial cells are harvested, packed in suitable containers and made non-viable by irradiation. As indicated in Lee's column 2, in contrast with traditional fermentation procedures, Lee's fermentation does not depend on multiplication of the fermenting organism in the food. Thus, the fact that Lee's non-viable organisms have special fermentation capabilities seems unsurprising.

Since applicant recites a probiotic which has been rendered non-viable, it is not understood why the recitation concerning "no substantial fermentation" is thought to be inconsistent. Again, Lee's organisms have been grown for maximum production of acid forming enzymes prior to being rendered non-viable.

In view of the foregoing, and in view of the unentered amendment of June 16, 2003, it

is respectfully requested that the application, as amended, be allowed.

Respectfully submitted,



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